



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 8, 2002

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

During the hearing on September 26, 2002, on the nomination of Miguel A. Estrada to the United States Court of Appeals for the District of Columbia Circuit, you and Senator Schumer restated your request that the Department of Justice disclose certain confidential and privileged appeal, certiorari, and amicus memoranda that Mr. Estrada authored when he was a career lawyer in the Office of the Solicitor General.

As we indicated in our letter of June 5, 2002, we must respectfully decline your request. The relevant historical, policy, and legal considerations implicated by your request demonstrate that disclosure of these memoranda from the Office of the Solicitor General would undermine the integrity of the decisionmaking process in that Office.

The Committee's request threatens the proper functioning of the Office of the Solicitor General. Indeed, all seven living former Solicitors General—from Archibald Cox to Seth P. Waxman—have written to the Committee and explained that the Committee's broad and unprecedented request would have a debilitating effect on the ability of the United States to represent itself in litigation. Their letter explained that, as Solicitors General, their "decisionmaking process required the unbridled, open exchange of ideas—an exchange that simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure." Thus, "[a]ny attempt to intrude into the Office's highly privileged deliberations would come at the cost of the Solicitor General's ability to defend vigorously the United States' litigation interests—a cost that also would be borne by Congress itself."

Longstanding historical Senate practice reinforces the position of the former Solicitors General that confidential, deliberative documents from the Office of Solicitor General have been, and should remain, confidential during confirmation hearings. As the attached charts demonstrate, since the beginning of the Carter Administration in 1977, the Senate has approved 67 United States Court of Appeals nominees who previously had worked in the Department of Justice. Those 67 nominees—of whom 38 had no prior

judicial experience—include eight former lawyers with the Office of the Solicitor General. Our review of each of these 67 nominees' hearing records establishes that in *none* of these cases did the Department of Justice produce internal deliberative materials created by the nominee while a Department lawyer. In fact, we could find no nominee for whom the Senate Judiciary Committee even *requested* that the Department produce such materials.¹ The Committee's request with respect to Mr. Estrada therefore is unprecedented.

Of particular relevance are the appellate-court nominees who previously had been Assistants to the Solicitor General or Deputy Solicitors General, and had not served as judges at the time of their nomination—the same position Mr. Estrada occupies now. The nominees, nominated by Presidents of both political parties and confirmed by Senates controlled by both political parties, are:

- Samuel A. Alito Jr. (Assistant to the Solicitor General, 1981-85; confirmed to the Third Circuit, 1990);
- Danny J. Boggs (Assistant to the Solicitor General, 1973-75; confirmed to the Sixth Circuit, 1986);
- William C. Bryson (Assistant to the Solicitor General, 1978-79; Deputy Solicitor General, 1986-94; confirmed to the Federal Circuit, 1994);
- Frank H. Easterbrook (Assistant to the Solicitor General, 1974-77; Deputy Solicitor General, 1978-79; confirmed to the Seventh Circuit, 1985);
- Daniel M. Friedman (Assistant to the Solicitor General, 1959-68; Deputy Solicitor General, 1968-78; confirmed to the appellate division of the Court of Claims (later the Federal Circuit), 1982);
- Richard A. Posner (Assistant to the Solicitor General, 1965-67; confirmed to the Seventh Circuit, 1981); and
- A. Raymond Randolph (Deputy Solicitor General, 1975-77; confirmed to the D.C. Circuit, 1990).

In none of these cases did the Department of Justice provide to the Committee the nominees' appeal, certiorari, or amicus recommendations. And in none of these cases did the Committee request that the Department do so.

The policy considerations implicated by the Committee's request underscore the strength of the Department's position and demonstrate that previous Senate Judiciary Committees have recognized the essential, long-term interest of the United States in protecting the integrity of such memoranda. The need to ensure the integrity of the process by which the Solicitor General makes litigation decisions for the United States is extraordinarily important. As the former Solicitors General explained, the interest in receiving honest, candid assessments of possible litigation positions, agency interests,

¹ The nomination of Stephen S. Trott to the Ninth Circuit was delayed by a dispute between the Committee and the Department with respect to access to internal documents wholly unrelated to Judge Trott. See Ruth Marcus, "Impasse Over Justice Documents Ends; Papers Turned Over; Senate Confirms Trott to Court of Appeals," Wash. Post., Mar. 25, 1998, at A23. The Committee never requested that the Department provide it with documents created by Judge Trott as a Department lawyer.

and Supreme Court opinions would be severely compromised by disclosure in this context. It is important to add, furthermore, that memoranda written by Assistants to the Solicitor General present legal arguments supporting the litigation position of the United States, not their personal views. These memoranda seek to determine the legal arguments that are appropriate in government briefs, not the legal or policy preferences of their author.

Furthermore, the Committee's need to assess a nominee's performance, intellect, and integrity can be accommodated in ways other than intruding into the deliberative process of the Office of the Solicitor General. For example, the Committee can review the nominee's written briefs and oral arguments, consider the opinions of others who served in the Office at the same time, and examine the nominee's written performance reviews. In Mr. Estrada's case, for example, there is a substantial body of information about his tenure in the Office of the Solicitor General. Former Solicitor General Seth Waxman, who supervised Mr. Estrada, has written to the Committee in support of his nomination. Mr. Waxman wrote:

During the time Mr. Estrada and I worked together, he was a model of professionalism and competence. In no way did I ever discern that the recommendations Mr. Estrada made or the analyses he propounded were colored in any way by his personal views—or indeed that they reflected anything other than the long-term interests of the United States.

Moreover, 14 of Mr. Estrada's former colleagues in the Office of the Solicitor General have written the Committee to emphasize his ability, collegiality, and integrity:

We also know Miguel to be a delightful and charming colleague, someone who can engage in open, honest, and respectful discussion of legal issues with others, regardless of their ideological perspectives. Based on our experience as his colleagues in the Solicitor General's office, we are confident that he possesses the temperament, character, and qualities of fairness and respect necessary to be an exemplary judge. In combination, Miguel's exceptional legal ability and talent, his character and integrity, and his deep and varied experience as a public servant and in private practice make him an excellent candidate for service on the federal bench.

Finally, Mr. Estrada has sent the Judiciary Committee copies of his performance evaluations from his tenure in the Office. These documents indicate that Mr. Estrada's supervisors gave him ratings of "outstanding"—the highest possible score—in every category for every evaluation period.

It bears emphasis that the long-standing historical practice, policy considerations, and views of the former Solicitors General are fully supported by applicable legal principles. At the outset, it is important to note that the memoranda sought by the Committee are indisputably within the scope of the deliberative process, attorney-client, and attorney work-product privileges. The Supreme Court has recognized "the valid

need for protection of communications between high Government officials and those who advise and assist them in the performance of their manifold duties.” *Houchins v. KQED*, 438 U.S. 1, 35 n.27 (1978). Indeed, the Court has explained that “the importance of this confidentiality is too plain to require further discussion. Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process.” *Id.* (internal quotation omitted). The deliberative process privilege’s ultimate purpose is to prevent injury to the quality of agency decisions by allowing government officials freedom to debate alternative approaches in private. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975). Based on these principles, courts have long recognized the Executive Branch’s authority to protect the integrity of documents and other materials which would reveal advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.² See *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997).

As a matter of law and tradition, these privileges can be overcome only when Congress establishes a “demonstrably critical” need for the requested information. *Senate Select Committee on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 731 (D.C. Cir. 1974) (*en banc*). It is insufficient for the requested material merely to “have some arguable relevance” to appropriate Congressional function. *Id.* at 733. In assessing whether Congress’ possesses a “demonstrably critical” need for the material in question, one crucial consideration is whether Congress can obtain reasonably equivalent information from alternative sources that would satisfy its legitimate needs. In this instance, we again note that the Committee has full access to Mr. Estrada’s briefs and oral arguments, to the information provided by Mr. Waxman, to the letter from former colleagues in the Solicitor General’s office, and to his performance reviews. The Committee also is free to contact any of Mr. Estrada’s former supervisors and colleagues in the Office of the Solicitor General to seek further information about Mr. Estrada’s temperament, fairness, analytical skills and abilities or any other matters the Committee appropriately deems relevant to its inquiry. Because the Committee has adequate sources of information about Mr. Estrada, among other reasons, it cannot establish the “demonstrably critical” need for the deliberative materials in question.

None of the seven examples cited during Mr. Estrada’s hearing as precedent for the Committee’s request—the nominations of Judge Frank Easterbrook to the Seventh Circuit, Judge Robert Bork and Chief Justice William Rehnquist to the Supreme Court, Benjamin Civiletti to be Attorney General and Deputy Attorney General, William Bradford Reynolds to be Associate Attorney General, Judge Stephen Trott to the Ninth Circuit, and Jeffrey Holmstead to be Assistant Administrator at the Environmental Protection Agency—supports the Committee’s request in this matter.

² For discussion of the history of assertions of the deliberative process privilege, see *History of Refusals by Executive Branch Officials to Provide Information Demanded by Congress: Part I—Presidential Invocations of Executive Privilege vis-à-vis Congress*, 6 Op. Off. Legal Counsel 751 (1982); *History of Refusals by Executive Branch Officials to Provide Information Demanded by Congress: Part II—Invocations of Executive Privilege by Executive Officials*, 6 Op. Off. Legal Counsel 782 (1982).

Of the seven cited nominees, the hearings of only two—Judge Bork and Judge Easterbrook—involved documents from their service in the Office of the Solicitor General. Senator Schumer placed into Mr. Estrada's hearing record a single, two-page amicus recommendation memorandum that Judge Easterbrook authored as an Assistant to the Solicitor General. The official record of Judge Easterbrook's confirmation hearing contains no references to this document, and based on a comprehensive review of the Department's files, we do not believe that the Department authorized its release in connection with Judge Easterbrook's nomination. Senator Schumer's possession of this memorandum does not suggest that the Department waived applicable privileges and authorized its disclosure in connection with Judge Easterbrook's or any other nomination.

The hearing record of Judge Bork's nomination to the Supreme Court demonstrates that the Committee received access to a limited number of documents related to three specific subjects of heightened interest to the Committee, two of which were related to Judge Bork's involvement in Watergate-related issues and triggered specific concerns by the Committee. The vast majority of memoranda authored or received by Judge Bork when he served as Solicitor General were neither sought nor produced. And the limited category of documents that were produced to the Committee did not reveal the internal deliberative recommendations or analysis of Assistants to the Solicitor General regarding appeal, certiorari, or amicus recommendations in pending cases.

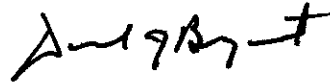
The remaining five nominations cited at the hearing similarly do not justify the disclosure of deliberative material authored by Mr. Estrada. None of the limited documents disclosed in the hearings for those five nominations involved deliberative memoranda from the Office of the Solicitor General. The Committee with respect to those five nominations requested specific documents primarily related to allegations of misconduct or malfeasance identified by the Committee. Moreover, as noted above, with respect to the nomination of Judge Trott, the Committee requested documents wholly unrelated to Judge Trott's service with the Department. Again, the vast majority of deliberative memoranda authored or received by these nominees were never sought or received by the Committee. In sum, the existence of a few isolated examples where the Executive Branch on occasion accommodated a Committee's targeted requests for very specific information does not in any way alter the fundamental and long-standing principle that memoranda from Office of Solicitor General—and deliberative Department of Justice materials more broadly—must remain protected in the confirmation context so as to maintain the integrity of the Executive Branch's decisionmaking process.

In conclusion, we emphasize that the Department of Justice appreciates and profoundly respects the Judiciary Committee's legitimate need to evaluate Mr. Estrada's qualifications for the federal bench. We again suggest, however, that the information currently available is more than adequate to allow the Committee to determine whether Mr. Estrada is qualified to be a federal judge.

Thank you for considering the Department's views on this matter. Mr. Estrada's nomination for a position on an important federal court of appeals has now been pending

for 518 days. There is no disagreement about the fact that he is a talented, experienced and exceptionally well-qualified nominee with strong and widespread bipartisan support. In fact, after an intensive investigation, the American Bar Association found Mr. Estrada to be unanimously well-qualified for a judgeship on the District of Columbia Circuit. We sincerely hope that the Committee and the Senate will approve Mr. Estrada's nomination before the close of the 107th Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Bryant", with a stylized flourish at the end.

Daniel J. Bryant
Assistant Attorney General

Enclosures

cc: The Honorable Orrin G. Hatch,
Ranking Member
The Honorable Charles E. Schumer
The Honorable Alberto Gonzales

**FORMER EMPLOYEES OF THE SOLICITOR GENERAL'S OFFICE
NOMINATED AND CONFIRMED TO THE FEDERAL COURTS OF APPEALS**

Name of Nominee	Circuit	Year of Confirmation	Department of Justice Position(s) Held
Alito, Samuel A. Jr.	3rd	1990	Assistant U.S. Attorney, District of New Jersey, 1977-81; Assistant to the Solicitor General, 1981-85; Deputy Assistant Attorney General, 1985-87; U.S. Attorney, District of New Jersey, 1987-90
Boggs, Danny J.	6th	1986	Assistant to Solicitor General, 1973-75
Bork, Robert H.	D.C.	1981	Solicitor General, 1973-77; Acting Attorney General, 1973-74
Bryson, William C.	Federal	1994	Assistant to Solicitor General 1978-79; Chief, Appellate Section, Criminal Division, 1979-82; Special Counsel, Organized Crime and Racketeering Section, Criminal Division, 1982-86; Deputy Solicitor General, 1986-94; Deputy Associate Attorney General (Acting Associate Attorney General), 1994
Easterbrook, Frank H.	7th	1985	Assistant to Solicitor General, 1974-77; Deputy Solicitor General, 1978-79
Friedman, Daniel M.	Federal	1978	Assistant Chief, Appellate Section, Antitrust Division, 1951-59; Assistant to Solicitor General, 1959-62; Second Assistant to Solicitor General, 1962-68; First Deputy Solicitor General, 1968-78; Acting Solicitor General, 1977
Posner, Richard A.	7th	1981	Assistant to Solicitor General, 1965-67
Randolph, A. Raymond	D.C.	1990	Assistant to Solicitor General, 1970-73; Deputy Solicitor General, 1975-77

**FORMER DEPARTMENT OF JUSTICE EMPLOYEES
WITH NO PRIOR JUDICIAL EXPERIENCE NOMINATED
AND CONFIRMED TO THE FEDERAL COURTS OF APPEALS**

Name of Nominee	Circuit	Year of Confirmation	Department of Justice Position(s) Held
Alito, Samuel A. Jr.	3rd	1990	Assistant U.S. Attorney, District of New Jersey, 1977-81; Assistant to the Solicitor General, 1981-85; Deputy Assistant Attorney General, 1985-87; U.S. Attorney, District of New Jersey, 1987-90
Anderson, Stephen H.	10th	1985	Trial Attorney, Tax Division, 1960-64
Archer, Glenn L.	Federal	1985	Assistant Attorney General, Tax Division, 1981-85
Boggs, Danny J.	6th	1986	Assistant to Solicitor General, 1973-75
Bork, Robert H.	D.C.	1981	Solicitor General, 1973-77; Acting Attorney General, 1973-74
Breyer, Stephen G.	1st	1980	Special Assistant to Assistant Attorney General, Antitrust Division, 1965-67
Bryson, William C.	Federal	1994	Assistant to Solicitor General 1978-79; Chief, Appellate Section, Criminal Division, 1979-82; Special Counsel, Organized Crime and Racketeering Section, Criminal Division, 1982-86; Deputy Solicitor General, 1986-94; Deputy Associate Attorney General (Acting Associate Attorney General), 1994
Bye, Kermit E.	8th	1999	Assistant U.S. Attorney, District of North Dakota, 1966-68
Dyk, Timothy	Federal	1999	Special Assistant to Assistant Attorney General, Tax Division, 1963-64
Easterbrook, Frank H.	7th	1985	Assistant to Solicitor General, 1974-77; Deputy Solicitor General, 1978-79
Fisher, Raymond C.	9th	1999	Associate Attorney General, 1997-99

Name of Nominee	Circuit	Year of Confirmation	Department of Justice Position(s) Held
Friedman, Daniel M.	Federal	1978	Assistant Chief, Appellate Section, Antitrust Division, 1951-59; Assistant to Solicitor General, 1959-62; Second Assistant to Solicitor General, 1962-68; First Deputy Solicitor General, 1968-78; Acting Solicitor General, 1977
Garland, Merrick B.	D.C.	1997	Special Assistant Attorney General, 1979-81; Assistant U.S. Attorney, District of Columbia, 1989-92; Deputy Assistant Attorney General, Criminal Division, 1993-94; Principal Associate Deputy Attorney General, 1994-97
Ginsburg, Douglas H.	D.C.	1986	Deputy Assistant Attorney General, Antitrust Division, 1983-84; Assistant Attorney General, Antitrust Division, 1985-86
Howard, Jeffrey R.	1st	2002	U.S. Attorney, District of New Hampshire, 1989-93
Johnson, Frank M., Jr.	11th	1979	U.S. Attorney, Northern District of Alabama, 1953-55
Jolly, E. Grady	5th	1982	Assistant U.S. Attorney, Northern District of Mississippi, 1964-67; Trial Attorney, Tax Division, 1967-69
Jones, Nathaniel R.	6th	1979	Assistant U.S. Attorney, Northern District of Ohio, 1961-67
King, Robert B.	4th	1998	Assistant U.S. Attorney, Southern District of West Virginia, 1970-74; U.S. Attorney, Southern District of West Virginia, 1977-81
Luttig, J. Michael	4th	1991	Principal Deputy Assistant Attorney General, Office of Legal Counsel, 1989-90; Assistant Attorney General, Office of Legal Counsel, 1990-91; Counselor to Attorney General, 1990-91
Merritt, Gilbert Stroud, Jr.	6th	1977	U.S. Attorney, Middle District of Tennessee, 1966-69

Name of Nominee	Circuit	Year of Confirmation	Department of Justice Position(s) Held
Michael, M. Blane	4th	1993	Assistant U.S. Attorney, Southern District of New York, 1971-72; Special Assistant U.S. Attorney, Northern District of West Virginia, 1972
Posner, Richard A.	7th	1981	Assistant to Solicitor General, 1965-67
Randolph, A. Raymond	D.C.	1990	Assistant to Solicitor General, 1970-73; Deputy Solicitor General, 1975-77
Rovner, Ilana D.	7th	1992	Assistant U.S. Attorney, Northern District of Illinois, 1973-77
Scalia, Antonin	D.C.	1982	Assistant Attorney General, Office of Legal Counsel, 1974-77
Schall, Alvin A.	Federal	1992	Assistant U.S. Attorney, Eastern District of New York, 1973-78; Trial Attorney, Civil Division, 1978-87; Assistant to Attorney General, 1988-92
Silberman, Laurence H.	D.C.	1985	Deputy Attorney General, 1974-75
Smith, Edward S.	Federal	1978	Chief of Trial Section, Tax Division, 1961; Deputy Assistant Attorney General for Trials, Tax Division, 1962-63
Starr, Kenneth W.	D.C.	1983	Counselor to Attorney General, 1981-1983; Solicitor General 1989-93
Tallman, Richard	9th	2000	Trial Attorney, Criminal Division, 1979-80; Assistant U.S. Attorney, Western District of Washington, 1980-83
Trott, Stephen	9th	1988	U.S. Attorney, Central District of California, 1981-83; Assistant Attorney General, Criminal Division, 1983-86; Associate Attorney General, 1986-88
Wald, Patricia M.	D.C.	1979	Attorney, Office of Criminal Justice, 1967-68; Assistant Attorney General, Office of Legislative Affairs, 1977-79
Walker, John M.	2nd	1989	Assistant U.S. Attorney, Southern District of New York, 1970-75
Wilkinson, James H.	4th	1984	Deputy Assistant Attorney General, Civil Rights Division, 1982-83

Name of Nominee	Circuit	Year of Confirmation	Department of Justice Position(s) Held
Williams, Stephen F.	D.C.	1986	Assistant U.S. Attorney, Southern District of New York, 1966-69
Wood, Diane P.	7th	1995	Special Assistant to Assistant Attorney General, Antitrust Division, Foreign Commerce Section, 1985-87; Deputy Assistant Attorney General, International, Appellate, and Policy, Antitrust Division, 1993-95

**FORMER DEPARTMENT OF JUSTICE EMPLOYEES
NOMINATED AND CONFIRMED TO THE FEDERAL COURTS OF APPEALS**

Name of Nominee	Circuit	Year of Confirmation	Department of Justice Position(s) Held	Prior Judicial Experience at the Time of Circuit Court Nomination?	Employment in the Solicitor General's Office?
Alito, Samuel A. Jr.	3rd	1990	Assistant U.S. Attorney, District of New Jersey, 1977-81; Assistant to the Solicitor General, 1981-85; Deputy Assistant Attorney General, 1985-87; U.S. Attorney, District of New Jersey, 1987-90	No	Yes
Anderson, Stephen H.	10th	1985	Trial Attorney, Tax Division, 1960-64	No	No
Archer, Glenn L.	Federal	1985	Assistant Attorney General, Tax Division, 1981-85	No	No
Barry, Maryanne	3rd	1999	Assistant U.S. Attorney, District of New Jersey, Civil Division, 1974-75; Deputy Chief, Appeals Division, 1976-1977; Chief, Appeals Division, 1977-1982; Executive Assistant U.S. Attorney, District of New Jersey 1981-82; First Assistant U.S. Attorney, District of New Jersey, 1981-83	Yes	No
Boggs, Danny J.	6th	1986	Assistant to Solicitor General, 1973-75	No	Yes
Boochever, Robert	9th	1980	Assistant U.S. Attorney, District of Arkansas, 1946-47	Yes	No
Bork, Robert H.	D.C.	1981	Solicitor General, 1973-77; Acting Attorney General, 1973-74	No	Yes
Boudin, Michael	1st	1992	Deputy Assistant Attorney General for Regulatory Affairs, Antitrust Division, 1987-90	Yes	No
Breyer, Stephen G.	1st	1980	Special Assistant to Assistant Attorney General, Antitrust Division, 1965-67	No	No

Name of Nominee	Circuit	Year of Confirmation	Department of Justice Position(s) Held	Prior Judicial Experience at the Time of Circuit Court Nomination?	Employment in the Solicitor General's Office?
Briscoe, Mary B.	10th	1995	Assistant U.S. Attorney, District of Kansas, 1974-84	Yes	No
Bryson, William C.	Federal	1994	Assistant to Solicitor General 1978-79; Chief, Appellate Section, Criminal Division, 1979-82; Special Counsel, Organized Crime and Racketeering Section, Criminal Division, 1982-86; Deputy Solicitor General, 1986-94; Deputy Associate Attorney General (Acting Associate Attorney General), 1994	No	Yes
Bye, Kermit E.	8th	1999	Assistant U.S. Attorney, District of North Dakota, 1966-68	No	No
Cole, R. Guy	6th	1995	Trial Attorney, Civil Division, 1978-80	Yes	No
Cyr, Conrad	1st	1989	Assistant U.S. Attorney, District of Maine, 1959-61	Yes	No
Daughtrey, Martha C.	6th	1993	Assistant U.S. Attorney, Middle District of Tennessee, 1968-69	Yes	No
Dyk, Timothy	Federal	1999	Special Assistant to Assistant Attorney General, Tax Division, 1963-64	No	No
Easterbrook, Frank H.	7th	1985	Assistant to Solicitor General, 1974-77; Deputy Solicitor General, 1978-79	No	Yes
Fisher, Raymond C.	9th	1999	Associate Attorney General, 1997-99	No	No
Flaum, Joel M.	7th	1983	First Assistant U.S. Attorney, Northern District of Illinois, 1972-75	Yes	No
Friedman, Daniel M.	Federal	1978	Assistant Chief, Appellate Section, Antitrust Division, 1951-59; Assistant to Solicitor General, 1959-62; Second Assistant to Solicitor General, 1962-68; First Deputy Solicitor General, 1968-78; Acting Solicitor General, 1977	No	Yes

Name of Nominee	Circuit	Year of Confirmation	Department of Justice Position(s) Held	Prior Judicial Experience at the Time of Circuit Court Nomination?	Employment in the Solicitor General's Office?
Garland, Merrick B.	D.C.	1997	Special Assistant Attorney General, 1979-81; Assistant U.S. Attorney, District of Columbia, 1989-92; Deputy Assistant Attorney General, Criminal Division, 1993-94; Principal Associate Deputy Attorney General, 1994-97	No	No
Ginsburg, Douglas H.	D.C.	1986	Deputy Assistant Attorney General, Antitrust Division, 1983-84; Assistant Attorney General, Antitrust Division, 1985-86	No	No
Guy, Ralph B., Jr.	6th	1985	Chief Assistant U.S. Attorney, Eastern District of Michigan, 1968-70; U.S. Attorney, Eastern District of Michigan, 1970-76	Yes	No
Hall, Cynthia H.	9th	1984	Trial Attorney, Tax Division, 1960-64	Yes	No
Hartz, Harris L.	10th	2001	Assistant U.S. Attorney, District of New Mexico, 1972-75	Yes	No
Hatchett, Joseph W.	11th	1979	Assistant U.S. Attorney, Middle District of Florida, 1966; First Assistant U.S. Attorney, Middle District of Florida, 1967-71	Yes	No
Hawkins, Michael D.	9th	1994	U.S. Attorney, District of Arizona, 1977-80	Yes	No
Howard, Jeffrey R.	1st	2002	U.S. Attorney, District of New Hampshire, 1989-93	No	No
Johnson, Frank M., Jr.	11th	1979	U.S. Attorney, Northern District of Alabama, 1953-55	No	No
Jolly, E. Grady	5th	1982	Assistant U.S. Attorney, Northern District of Mississippi, 1964-67; Trial Attorney, Tax Division, 1967-69	No	No
Jones, Nathaniel R.	6th	1979	Assistant U.S. Attorney, Northern District of Ohio, 1961-67	No	No

Name of Nominee	Circuit	Year of Confirmation	Department of Justice Position(s) Held	Prior Judicial Experience at the Time of Circuit Court Nomination?	Employment in the Solicitor General's Office?
King, Robert B.	4th	1998	Assistant U.S. Attorney, Southern District of West Virginia, 1970-74; U.S. Attorney, Southern District of West Virginia, 1977-81	No	No
Krupansky, Robert B.	6th	1982	U.S. Attorney, Northern District of Ohio, 1969-1970	Yes	No
Leval, Pierre N.	2nd	1993	Assistant U.S. Attorney, Southern District of New York, 1964-68	Yes	No
Lewis, Timothy K.	3rd	1992	Assistant U.S. Attorney, Western District of Pennsylvania, 1983-1991	Yes	No
Lipez, Kermit	1st	1998	Staff Attorney, Civil Rights Division, 1967-1968	Yes	No
Luttig, J. Michael	4th	1991	Principal Deputy Assistant Attorney General, Office of Legal Counsel, 1989-90; Assistant Attorney General, Office of Legal Counsel, 1990-91; Counselor to Attorney General, 1990-91	No	No
Marcus, Stanley	11th	1997	Assistant U.S. Attorney, Eastern District of New York, 1975-78; Deputy Chief Organized Crime Strike Force, 1978-79; Chief Organized Crime Strike Force, 1980-82; U.S. Attorney, Southern District of Florida, 1982-85	Yes	No
Martin, Boyce F., Jr.	6th	1979	Assistant U.S. Attorney, Western District of Kentucky, 1964; U.S. Attorney, Western District of Kentucky, 1965	Yes	No
McKee, Theodore A.	3rd	1994	Assistant U.S. Attorney, Eastern District of Pennsylvania, 1977-80	Yes	No
Merritt, Gilbert Stroud, Jr.	6th	1977	U.S. Attorney, Middle District of Tennessee, 1966-69	No	No

Name of Nominee	Circuit	Year of Confirmation	Department of Justice Position(s) Held	Prior Judicial Experience at the Time of Circuit Court Nomination?	Employment in the Solicitor General's Office?
Michael, M. Blane	4th	1993	Assistant U.S. Attorney, Southern District of New York, 1971-72; Special Assistant U.S. Attorney, Northern District of West Virginia, 1972	No	No
Michel, Paul R.	Federal	1988	Deputy Chief Public Integrity Section, Criminal Division, 1976-78; Associate Deputy Attorney General, 1978-81	Yes	No
Newman, Jon O.	2nd	1979	U.S. Attorney, District of Connecticut, 1964-69	Yes	No
Poole, Cecil F.	9th	1979	U.S. Attorney, Northern District of California, 1961-70	Yes	No
Posner, Richard A.	7th	1981	Assistant to Solicitor General, 1965-67	No	Yes
Randolph, A. Raymond	D.C.	1990	Assistant to Solicitor General, 1970-73; Deputy Solicitor General, 1975-77	No	Yes
Rogers, Judith Ann W.	D.C.	1993	Assistant U.S. Attorney, District of Columbia, 1965-68; Trial Attorney, Criminal Division, 1969-71	Yes	No
Rovner, Ilana D.	7th	1992	Assistant U.S. Attorney, Northern District of Illinois, 1973-77	No	No
Scalia, Antonin	D.C.	1982	Assistant Attorney General, Office of Legal Counsel, 1974-77	No	No
Schall, Alvin A.	Federal	1992	Assistant U.S. Attorney, Eastern District of New York, 1973-78; Trial Attorney, Civil Division, 1978-87; Assistant to Attorney General, 1988-92	No	No
Schroeder, Mary M.	9th	1979	Trial Attorney, Civil Division, 1965-69	Yes	No
Sentelle, David B.	D.C.	1987	Assistant U.S. Attorney, Western District of North Carolina, 1970-74	Yes	No

Name of Nominee	Circuit	Year of Confirmation	Department of Justice Position(s) Held	Prior Judicial Experience at the Time of Circuit Court Nomination?	Employment in the Solicitor General's Office?
Silberman, Laurence H.	D.C.	1985	Deputy Attorney General, 1974-75	No	No
Siler, Eugene E.	6th	1991	U.S. Attorney, Eastern District of Kentucky, 1970-75	Yes	No
Smith, Edward S.	Federal	1978	Chief of Trial Section, Tax Division, 1961; Deputy Assistant Attorney General for Trials, Tax Division, 1962-63	No	No
Starr, Kenneth W.	D.C.	1983	Counselor to Attorney General, 1981-1983; Solicitor General 1989-93	No	No *
Stewart, Carl E.	5th	1994	Assistant U.S. Attorney, Western District of Louisiana, 1979-1983	Yes	No
Tallman, Richard	9th	2000	Trial Attorney, Criminal Division, 1979-80; Assistant U.S. Attorney, Western District of Washington, 1980-83	No	No
Trott, Stephen	9th	1988	U.S. Attorney, Central District of California, 1981-83; Assistant Attorney General, Criminal Division, 1983-86; Associate Attorney General, 1986-88	No	No
Wald, Patricia M.	D.C.	1979	Attorney, Office of Criminal Justice, 1967-68; Assistant Attorney General, Office of Legislative Affairs, 1977-79	No	No
Walker, John M.	2nd	1989	Assistant U.S. Attorney, Southern District of New York, 1970-75	No	No
Wilkinson, James H.	4th	1984	Deputy Assistant Attorney General, Civil Rights Division, 1982-83	No	No
Williams, Ann C.	7th	1999	Assistant U.S. Attorney, Northern District of Illinois, 1976-85	Yes	No

* Judge Starr was confirmed as a Circuit Judge on the District of Columbia Circuit *before* serving as Solicitor General.

Name of Nominee	Circuit	Year of Confirmation	Department of Justice Position(s) Held	Prior Judicial Experience at the Time of Circuit Court Nomination?	Employment in the Solicitor General's Office?
Williams, Stephen F.	D.C.	1986	Assistant U.S. Attorney, Southern District of New York, 1966-69	No	No
Wilson, Charles R.	11th	1999	U.S. Attorney, Middle District of Florida, 1994-99	Yes	No
Wood, Diane P.	7th	1995	Special Assistant to Assistant Attorney General, Antitrust Division, Foreign Commerce Section, 1985-87; Deputy Assistant Attorney General, International, Appellate, and Policy, Antitrust Division, 1993-95	No	No